

Introduction

The purpose of this report is to provide a brief overview of the work and achievements of the LSS Tariff Review and Tariff Renewal process, as the Society winds down tariff renewal activities and enters a new phase of planning for legal aid renewal, its new strategic priority.

LSS Tariff Review, January 2004 – October 2005

Background

In late 2003, the LSS Board directed staff to conduct a tariff review in response to persistent concerns about declining lawyer participation in the legal aid system (also referred to as “lawyer attrition”). Low compensation appeared to be a key factor in the decline: not only had tariff rates not increased since 1991, they had been subject to a series of reductions and holdbacks. Beyond the tariff rate, there was a concern that tariff structures may also be outdated, as there had been no comprehensive review of the B.C. tariff system since the Task Force on Public Legal Services in 1984. The 2002 budget reductions and consequent restructuring reinforced the need for a thorough review.

LSS staff formed a Tariff Review Working Group and commenced the review in January 2004. The working group engaged in broad consultations with tariff lawyers and other justice system participants, as well as extensive research. It produced interim reports to the Board in June and November 2004, and a preliminary version of the final report in May 2005. The final report, [*Managing for Results: LSS Tariff Renewal*](#), was submitted in October 2005, and recommended changes to tariff management, rates, and structures to encourage lawyers to participate in the legal aid system and to support them in providing quality services.

Objectives and Guiding Principles of the Tariff Review

At the outset, the LSS Board set the following objectives for the tariff review:

1. To establish and maintain tariffs that attract private bar lawyers who will provide quality services to meet the legal needs of LSS clients
2. To establish and maintain tariffs that promote efficiency and effectiveness within the legal aid system and the larger justice system
3. To establish methods and criteria for regular evaluation of the tariffs as an integral part of LSS administration to ensure that the legal aid system is sustainable and responsive to changing needs

During the tariff review, the Board also endorsed the following principles to guide the working group:

1. LSS will maintain tariffs that provide fair and reasonable compensation to enable lawyers to recover overhead costs and obtain an appropriate level of fees for services rendered
2. LSS will maintain tariffs that reward lawyers for efficient service within the justice system to achieve effective results for LSS clients
3. LSS will maintain tariff management processes that promote efficient and effective allocation of resources and are cost-effective and simple
4. LSS will actively engage other justice system participants in promoting procedural changes that ensure efficiency and effectiveness in the tariff system and the larger justice system

Tariff Review Process

The tariff review was divided into two phases:

Phase 1 – January to June 2004

Phase 1 of the tariff review focused primarily on consultation with members of the private bar. The working group organized consultation meetings in each of the 7 regional centres, and at the Family Duty Counsel Conference in Vancouver. Over 100 lawyers attended these meetings, representing about ten percent of the tariff bar. The working group submitted an interim report to the Board in June 2004 summarizing the main themes from the consultation and outlining the process for Phase 2.

Phase 2 – June 2004 to April 2005

In Phase 2, the working group focused on consultation and surveys, as well as research.

Consultations and surveys

In Phase 2, the working group expanded its consultation process to include lawyers and non-lawyers, and conducted surveys of key groups in the justice system. These efforts included:

- Meetings with local CBA sections in five of the seven regional centres, plus Nanaimo and New Westminster
- Meetings with 15 justice system agencies, including members of the judiciary, Crown counsel (federal and provincial), court administrators, child protection workers, legal advocates, and the BC Branch of the Canadian Bar Association
- Surveys of LSS staff, 43 community organizations, 10 legal education organizations, 36 newly called lawyers, and 76 former tariff lawyers (i.e. lawyers who had reduced or eliminated their legal aid caseloads)
- The first-ever compensation survey of LSS tariff lawyers (268 lawyers responded)

Research

The working group undertook a wide-ranging research effort, analyzing a wealth of data from internal LSS records, academic sources, and governments and legal aid agencies in other jurisdictions. These activities included:

- Review of LSS archives to develop a concise history of the development of the tariff system, including detailed summaries of tariff rates over time
- Compilation and analysis of over 20 years of LSS internal statistics on various aspects of legal aid delivery, including lawyer demographic and billing profiles, tariff expenditures, case costs, and case outcomes
- Research on compensation rates and incomes for comparator groups (private lawyers, judges, Crown counsel, and other publicly funded ad hoc lawyers)
- Review of tariff compensation methods in other Canadian and Commonwealth legal aid systems
- Analysis by independent compensation expert of the appropriate range of tariff lawyer compensation
- Review of research and policy papers on legal aid service delivery and reform in other jurisdictions
- Review of literature on legal aid and results-based management (RBM)
- Research on methods employed in existing models of “performance contracting” for legal services found in the B.C. public sector
- Internal working group discussions of tariff policy changes to improve tariffs and implement RBM

[Interim report, November 2004](#)

The working group submitted an interim report to the Board in November 2004 summarizing progress in Phase 2 and outlining the remaining work.

[Final Report, October 2005 – \(*Managing for Results: LSS Tariff Renewal*\)](#)

The working group delivered a preliminary version of the final report to the Board in May 2005, and the final version of the report in October 2005. The report consisted of two volumes, with the main body of the report in Volume I and [appendices in Volume II](#) containing survey results, statistical reports, and other background documents.

The working group’s consultations, research and analysis formed the basis for recommendations to the LSS Board in 4 main areas:

- **Adopt results-based management for the tariff system** – The working group suggested a framework that would extend and integrate existing LSS strategic planning processes to encompass RBM for the tariff system
- **Adopt a principled approach to tariff compensation** – The working group proposed a multi-faceted approach that included articulation of guiding principles, retention of basic block and hourly fee structures, introduction of tiered rates based on lawyer experience, and setting a numerical target of 75% of private market rates for clients of modest means to be achieved over five years
- **Adjust the tariff structures to remedy problems, improve compensation, and enhance results** – The working group identified a variety of specific changes in the criminal, family and CFCSA tariffs
- **Maintain a strategic approach to contracting** – The working group recommended that LSS continue existing contracting initiatives and consider selective use of contracting in other service delivery areas

LSS Tariff Renewal, February 2005 – April 2007

Even before the tariff review process was completed, LSS embarked on a tariff renewal process, implementing changes to respond to concerns raised in the consultations and to improve the tariffs. The main changes are listed below, along with references (in italics) to the tariff review objectives and guiding principles to which each change primarily relates.

Operational changes arising from Phase 1

Early in Phase 2, the working group reviewed changes suggested in the Phase 1 consultations and implemented those that did not require significant cost or further assessment. These changes included:

- Adding resources for lawyers to the [LSS website](#), such as LSS policies and forms, a detailed contact list of LSS staff, and an expert database
- Conducting reviews of standard communications with tariff bar to ensure that language is clear and any requests for information are necessary
- Reviewing thresholds for requiring prior authorization for disbursements in order to limit the instances where counsel must request approval
- Expanding support for lawyer education, by increasing access to online research materials and discussion forums, providing bursaries for attendance at CLE seminars, and introducing pilot projects to support mentoring of junior lawyers

[These changes respond to Objectives 1 and 2 and Principle 3]

Recommendation 1 of Managing for Results – Designing and Implementing RBM

In 2006/2007, the working group continued its work on RBM, including the following:

- Internal meetings to discuss design and implementation of RBM for the tariffs
- Consultation with Strategic Planning (SP) Department to discuss integration between organizational planning activities and RBM for the tariff system
- Implementation (through SP Department) of strategic planning at the departmental level, including identification of departmental goals and performance measures
[Responds to Objective 1 and Principle 3]

Recommendations 2 and 3 of Managing for Results — Improvements to tariff rates and structures

Beginning in February 2005, LSS began to introduce changes to the tariff rates and structures to improve compensation levels, remove obstacles to quality service, and encourage efficiency:

- February 2005** Increased general preparation hours from 8 to 14 for Family Tariff (Emergency Services)
[Responds to Objectives 1 and 2 and Principles 1 and 2]
- March 2005** Introduced Family Tariff (Extended Services) to allow up to 40 hours for court preparation and attendance in high conflict cases
[Responds to Objectives 1 and 2 and Principles 1 to 3]
- April 2005** Reduced holdbacks from 10% to 5%
[Responds to Objective 1 and Principle 1]
- May 2005** Introduced Limited Scope Family Services to allow up to 14 hours for unbundled services in complex Supreme Court cases
[Responds to Objectives 1 and 2 and Principles 1 to 3]
- June 2005** Eliminated the 5% holdback and repaid holdbacks for the period between April and June 2005 (LSS also repaid holdbacks for 2004/2005)
[Responds to Objective 1 and Principle 1]
- October 2005** Introduced new tariff items for:
- an administration fee of \$40 per referral
 - preparing an opinion letter for an appeal
 - visiting clients in custody
 - additional preparation time required for joint FRA/CFCSA proceedings (CFCSA Tariff)
 - multiple information guilty pleas (Criminal Tariff)
- [Responds to Objectives 1 and 2 and Principles 1 and 2]*

- February 2006** Introduced [tiered rates](#) (\$80, \$84 and \$88) based on lawyer experience levels (for more information, see [tiered rates document](#))
[Responds to Objectives 1 and 2 and Principles 1 and 2]
- June 2006** Introduced [changes](#) to Family, CFCSA, Immigration and Disbursements tariffs, including:
- increasing the preparation time for mediation in the family and CFCSA tariffs
 - allowing lawyers to bill disbursements under Family Tariff (Limited Scope) referrals
 - allowing immigration lawyers to bill actual attendance at IRB hearings
- [Responds to Objectives 1 and 2 and Principles 1 and 3]*
- September 2006** [Increased Hourly Rates](#) by 4.8%
(from \$80-\$84-\$88 to \$83.90-\$88.10-\$92.29)
[Responds to Objective 1 and Principle 1]
- October 2006** Implemented an overall [increase of 5% in the criminal tariff](#) by adjusting tariff items for non-trial services to better reflect counsel effort and encourage early resolution where appropriate
[Responds to Objectives 1 and 2 and Principles 1 and 2]
- November 2006** Introduced [significant changes to the Family Tariff and Immigration Tariffs](#), and raised the tariff rate for junior counsel to 75% of the applicable tiered rate

In the Family Tariff, [key changes](#) included:

- adopting a policy statement to guide service delivery
- expanding the role of family duty counsel
- adding tariff items to allow preparation and attendance at mediation or collaborative law processes for all family services
- replacing Limited Scope services with new and broadened Dispute Resolution services
- expanding coverage guidelines for Extended Services using case management

[Responds to Objectives 1 and 2 and Principles 1 to 4]

In the Immigration Tariff, key changes included:

- increasing preparation hours for refugee hearings
- adding a tariff item for preparation during meal breaks

[Responds to Objectives 1 and 2 and Principles 1 to 3]

April 2007 Introduced a [disbursements block payment](#) for the criminal, family, CFCSA and immigration tariffs
[Responds to Objectives 1 and 2 and Principles 1 and 3]

Remaining items and future work

As the preceding section illustrates, during the tariff renewal process LSS made significant improvements to tariff compensation and structures — removing holdbacks, introducing tiered rates, increasing tariff rates, and expanding coverage and maximum hours for some services. As LSS moves forward with legal aid renewal, it will address those elements of tariff renewal that require additional work to develop and implement.

Improvements to tariff structures

LSS has implemented most of the changes recommended in [Managing for Results](#), and will introduce the remaining changes in the fall of 2007. These changes, which primarily affect the criminal tariff, include a new early preparation fee, an expanded Strategic Case Assessment Program (SCAP), and an improved extra fees process. LSS will consider future improvements within the framework of legal aid renewal.

Results-based management

LSS will continue to work on design and implementation of RBM in the context of legal aid renewal.

Principled approach to tariff compensation

LSS has implemented most of the elements of a principled approach to compensation recommended in [Managing for Results](#), but in keeping with Board direction, has not developed the concept of a principled rate or any numerical targets.

Contracting

In keeping with the recommendation in [Managing for Results](#), LSS has continued its existing contracting initiatives, and will consider further opportunities as it proceeds with legal aid renewal.

Evaluation of tariff renewal

In 2007/2008, LSS will evaluate the changes implemented during the tariff renewal process to measure their impact and guide future changes to the tariff system.